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MAYOR ELZIE ODOM

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 5, 1999

EX PARTE OR LATE FILED

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: Ex Parte Filing in cases WT 99-217; CC96-98 ✓

Dear Chairman Kennard:

I am writing in opposition to the proposed FCC rules in cases WT 99-217 and CC96-98 relative to preempting City ordinances and building codes affecting placement of telecommunications antennas on building roofs by telephone companies.

It is my understanding that the proposed rules would allow multiple telephone companies to place their wires in buildings and place separate antennas on the buildings without the permission of the building owner and contrary to any City zoning ordinance or building code restricting the placement of multiple antennas of unlimited size on building roof tops. Such preemption will disregard the safety and other concerns which these ordinances address. In Texas, the Public Utility Commission has certificated in excess of sixty telephone companies as incumbent local exchange carriers. Under the proposed FCC rule, this could mean numerous companies will be allowed to place their wires and antennas in and on top of a building without ever having to seek the permission of the building owner.

This proposed rule will violate principles of Federalism where zoning and local safety concerns are reserved to municipalities. For over eighty years, municipalities have been authorized to enact zoning ordinances to protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. Municipalities may restrict the numbers, types, locations, size and aesthetics of antennas on buildings to achieve these legitimate goals on behalf of its citizens. There is no evidence that the enactment of zoning has impeded technology or the development of the economy nor that it will in the future. Furthermore, the Congress has not authorized the FCC to take these actions.

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In the same way, building codes are enacted to protect the public health, safety and welfare of a municipality's citizens. They are imposed for engineering related safety reasons specifically designed to address the safety related concerns of each local area. Most buildings will not be designed or constructed with the idea that large antennas will be placed on the roof. This could result in damaged roofs or even more important injury to inhabitants or passers-by.

Furthermore, such proposed rule will violate constitutional property rights by taking public and private property without compensation. Property owners have the right to control who comes on their property. Again, the Congress has not authorized the FCC to condemn space in every building in the country for telephone companies to place their wires and antennas.

On rights-of-way management, local control of municipal rights-of-way is essential to protect the public health, safety and welfare. Use of the streets and rights-of-way for utility purposes, particularly the installation and repair of facilities, disrupts traffic, creates public safety hazards, damages street surfaces, and significantly decreases the life expectancy of streets. Furthermore, municipalities have the historic right to manage and control their rights-of-way and other public property within the city as the trustee or guardian for its citizens. This includes the right to recover fair and reasonable compensation based upon the value of the rights-of-way. Municipalities acquire streets, rights-of-way, and other public property by purchase, eminent domain, dedication, exchange, and acquisition of easements. It is inappropriate for the citizens of municipalities across the country to be called upon to subsidize national and international telecommunications companies through rent-free use of public land. It has become common practice for the telephone companies to complain generally that municipalities are a barrier to entry and to competition. However, what is not common are specifics as to what practice in what municipality has caused such a barrier. Such specifics would of course provide the municipality the opportunity to respond to the charges made.

Finally, the proposed rule suggests that the combined Federal, state and local tax burden on phone companies is too high. The FCC does not have the authority to affect state and local taxes. For these reasons, I ask that you reject the proposed actions.

Sincerely,


Elzie Odom
Mayor

Chairman William Kennard

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cc: Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Commissioner Susan Ness
Senator Phil Gramm
Senator Kay Bailey Hutchison
Ms. Magalie Roman Salas
Mr. Jeffrey Steinberg
Mr. Joel Tauenblatt
International Transcription Services
Mr. Kevin McCarty
Ms. Barrie Tabin
Mr. Robert Fogel
Mr. Lee Ruck
Mr. Thomas Frost